**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**DIVISION OF JUDGES**
**SAN FRANCISCO BRANCH OFFICE**

**ENDO PAINTING SERVICE, INC**.

**and** **Case 20–CA–080565**

**INTERNATIONAL UNION OF PAINTERS**

**AND ALLLIED TRADES, PAINTERS**

**LOCAL UNION 1791**

*Dale K. Yashiki, Esq. and Scott Edward Hovey, Jr., Esq.,* Honolulu, Hawaii, for the General Counsel
*Kristi L. Arakaki, Esq. and Cid H. Inouye, Esq., O'Connor Playdon & Guben LLP*, Honolulu, Hawaii, for the Respondent
*Rebecca L. Covert, Esq. and Davina W. Lam, Esq., Takahashi & Covert,* Honolulu, Hawaii, for the Union

## DECISION

### Statement of the Case

**GERALD A. WACKNOV, Administrative Law Judge.** Pursuant to notice a hearing in this matter was held before me in Honolulu, Hawaii on October 16 and 17, 2012. The initial charge was filed by International Union of Painters and Allied Trades, Painters Local Union 1791 (the Union) on May 7, 2012, and amended charges were filed by the Union thereafter. On July 31, 2012 the Regional Director for Region 20 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging violations by Endo Painting Service, Inc. (the Respondent) of Section 8(a) (5) and (1) of the National Labor Relations Act, as amended (the Act). The Respondent, in its various answers to the complaint, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from Counsel for the Acting General Counsel (General Counsel), counsel for the Respondent, and counsel for the Union. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

## Findings of Fact

### I. Jurisdiction

The Respondent, Endo Painting Service, Inc., a Hawaii corporation with an office and place of business in Wailuku and Waipahu, Hawaii, is engaged in providing painting services on the islands of Maui and Oahu. In the course and conduct of its business operations the Respondent annually purchases and receives goods valued in excess of $50,000 at its Hawaii facilities directly from points outside the State of Hawaii and from other enterprises located within the State of Hawaii, each of which other enterprises receives such goods directly from points outside the State of Hawaii. It is admitted and I find that the Respondent is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

### II. The Labor Organization Involved

It is admitted, and I find, that the Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act,

### III. Alleged Unfair Labor Practices

#### A. Issues

The principal issue in this proceeding is whether the collective-bargaining agreement between the parties precludes class action grievances by the Union on behalf of all employees collectively.

#### B. Facts and Analysis

Since the 1960s the Respondent has been a signatory party to a succession of collective-bargaining agreements between the Painting and Decorating Contractors Association of Hawaii and the Union. The collective-bargaining agreement in existence at the time of the hearing extended from February 1, 2008 to January 31, 2013. About 40 contractors, including the Respondent, are signatory to this agreement. The agreement contains the identical grievance procedure that has been in the contract for at least the past 10 years, as follows:

> Section 17. Grievance Procedure
>
> All grievances or disputes involving the application, interpretation, or alleged violation of this Agreement shall be handled in the following manner:
>
> Step #1. A written and signed complaint must be presented to the Union within 7 working days from the date the alleged grievance occurred.
>
> Step #2. The Union Representative and the Employer or his/her representative shall attempt to adjust the grievance or dispute promptly.
>
> Step #3. If the grievance or dispute is not satisfactorily adjusted at Step #2 within 2 working days after being submitted, it shall be referred to the Joint Industry Committee…

> Step #4. If the Joint Industry Committee cannot reach a decision by a majority vote within 30 days after the grievance or dispute is first submitted to it, then the grievance or dispute shall be submitted to arbitration…

The agreement also contains an arbitration provision (Sec. 18. Arbitration) that specifies, inter alia:

> A. Within 15 days after the Joint Industry Committee reaches an impasse on a grievance decision, the Association and the Union shall mutually agree upon an arbitrator.
>
> * * *
>
> F. No grievance subject to the grievance procedure or arbitration shall be recognized unless considered in step #1 within 7 working days after the date of the alleged violation.

The agreement establishes and defines the authority of the Joint Industry Committee (Sec. 19):

> A. Composition.
>
> 1. To better the relationship between the Union and the Employer, there is hereby established a Joint Industry Committee…composed of 3 members representing the Employers and appointed by the Association, and 3 members representing the Union and appointed by the Union. Both sides may select alternates who may vote when regular members are absent. Authorized actions of the members of the committee or their agents shall be in the name of the committee.
>
> * * *
>
> B. Scope and Authority. The authority of the members of the committee is limited by the terms of this Agreement. The committee may determine questions relating to the application of, interpretation of and alleged violations of this Agreement. The committee shall not modify the terms of this Agreement.

Mitchell Shimabukuro is the Union's business representative. Since June 2010 he has sole responsibility for filing grievances on behalf of the Union. By letter dated March 23, 2011 to Greg Endo, Respondent's president, Shimabukuro filed a "Class Action Grievance Regarding Violations of Sections 9, 13, 14 and 15 of the Collective Bargaining Agreement with IUPAY Local 1791" against the Respondent.[1] The letter, inter alia, is as follows:

> Pursuant to section 17 of the collective bargaining agreement the [Union] hereby submits this class action grievance over the misapplication, misinterpretation, and violations of the collective bargaining agreement by your company.

[1] Insofar as the record shows, this is the first class action grievance Shimabukuro has brought against any employer. The record does not show whether his predecessor brought class action grievances.

> We have received reports and complaints indicating that Endo Painting Service, Inc's payment of compensation is not in compliance with classifications and wages…"
>
> It is unlawful for a contractor to make payment of compensation in cash contrary to the wages and classification …and to allow employees to smoke marijuana and drink on state job sites.
>
> We request you to cease and desist from the aforementioned violations of the agreement, take appropriate corrective actions, make employees whole, and afford other appropriate relief to all bargaining unit employees and the union. (Emphasis supplied.)

On April 28, 2011 a hearing on the grievance was held before the Joint Industry Committee. On April 29, 2011 the Joint Industry Committee, comprised of three employer representatives and three union representatives, unanimously issued an award in favor of the Union, as follows:

> Based on the evidence presented at the hearing the Joint Industry Committee has decided to uphold and to sustain the March 23, 2011 class grievance filed against Endo Painting Service, Inc. The Committee finds that the Employer violated the collective bargaining agreement by paying employees in cash without making proper deductions of payroll and other taxes, and its failure to make appropriate payments for trust fund contributions.[2] In addition the Committee finds that Endo Painting Services Inc. has failed to take appropriate safety measures according to the drug policy in the collective bargaining agreement.
>
> Accordingly, the employer is ordered (a) to cease and desist from making cash payments to its bargaining unit employees without appropriate deductions and payment of contributions to the trust funds for all hours of work, (b) to produce the books and accounts of its payroll of bargaining unit employees from January 1, 2010 to the present indicating all hours worked for examination by an independent certified public accountant who shall calculate the amount of back pay and contributions due and owing to the trust funds under Section 19J, (c) to pay damages to affected employees and to the trust funds as formulated by the certified public accountant,(d) to pay cost and attorney's fees for enforcement of this order under Section 32 of the collective bargaining agreement, and (e) review with its employees the drug policies under the collective bargaining agreement and to report to the union of the safety measures it has taken to comply with its drug and alcohol policies at all jobsites.
>
> This decision is supported by a unanimous vote of the Joint Industry Committee. It is final and binding upon the parties under Section 19G of the collective bargaining agreement.[3]

[2] Gregory Endo, Respondent's president, testified in this proceeding that during the Joint Industry Committee hearing on April 28, 2011 he acknowledged that the Respondent was making cash payments to employees on occasion.
[3] As noted in the contract language, the arbitration process is applicable only to instances of impasse of the Joint Industry Committee.

The Respondent refused to comply with the award. On June 28, 2012, the Hawaii Circuit Court entered an Order enforcing the award and order of the Joint Industry Committee. The Court's Order notes that, "Prior to and at the April 28, 2011 [Joint Industry Committee] hearing the representatives of the Employer admitted that Employer had previously made cash payment to its employees, and failed to pay wage and benefits as required by the collective bargaining agreement." The Court issued a subsequent confirming Judgment on July 16, 2012. The matter is currently pending on the Respondent's appeal before the Hawaii Court of Appeals.

On March 8, 2012, Shimabukuro filed another class action grievance (MS-12-001) against the Respondent because of signed complaints by members and verbal complaints by spouses of members regarding probable violations and continuing violations of the contract by the Respondent.[4] Attached to the grievance form Shimabukuro states his belief that the Respondent has made unilateral changes to the existing terms of the collective-bargaining agreement. A summary of the allegations is as follows: that "in recent past [the Respondent] has been refusing to pay overtime on jobs and admitted on voice recordings to banking hours for employees that worked over 40 hours" in violation of the contract; that it has changed employees time sheets to reflect fewer working hours during the pay period than the employee actually worked; that it has been paying cash to employees on the weekends; and that it has required some employees to use their personal vehicle to transport workers and materials.

The Respondent's attorney replied by letter dated March 14, 2012. The letter is essentially an information request from the Respondent to the Union, requesting the names of all employees affected by each alleged violation of the contract provisions, the date of each of the alleged violations, the specific manner in which each of the individuals has been affected by the Respondent's alleged failure to abide by the contract, and the amounts they are allegedly owed. The letter concludes, "It is Endo's policy to comply with all the terms of the Agreement and we believe Endo has done so."

Shimabukuro replied by letter dated April 5, 2012, attaching a lengthy list of names of current and former bargaining unit employees. He asserts that, pursuant to the prior 2011 class action grievance, the Respondent has failed to comply with an award by the Joint Industry Committee against the Respondent for certain identical violations dating back to January 1, 2010, that the Respondent has continued and is continuing to violate the same and other provisions of the agreement, and that the current grievance is a continuation of the former grievance.

The Respondent's attorney replied to the Union's aforementioned April 5, 2012 letter by again requesting the specific information the Respondent had requested in its earlier March 14, 2012 letter. In addition, the Respondent states:

> Grievance No MS-12-001 and your letter of April 8, 2012 indicates that the instant case is a "class grievance." Please identify the provisions in the Contract that authorizes a "class grievance" as we could not locate any such provision.

[4] Signed complaints, dated between February 21 and March 2, 2012, introduced into evidence, are from four individuals. The employees complain about not receiving overtime on certain jobs, receiving cash, being required to use their own equipment and trucks on jobs, having to bank hours for overtime work, not being given documentation for periods of unemployment and Respondent's unwillingness to sign unemployment papers, not receiving the correct amount when being paid in cash, not being sent out on jobs after complaining about these matters, being ordered to change time sheets, being fearful of losing their jobs if they complain.

Shimabukuro replied by letter dated April 24, 2012 stating, inter alia, that he believed the class grievance was authorized by various provisions of the contract, namely Section 3 (Union Recognition), Section 17 Step #2 (Grievance Procedure), and Section 19H (Joint Industry Committee).

In a separate letter, also dated April 24, 2012, Shimabukuro sent the Respondent a lengthy 4-page request for information covering unit employees employed by the Respondent "during any period from January 1, 2010 to the present" stating, "The information is needed to properly investigate the class action grievance."

The information requested includes the following: daily timesheets or cards; daily reports; weekly reports; work logs; the names of dates of employees who were paid cash for work and the amounts of such payments and other related details; the names of employees who were requested to "bank" hours in excess of 40-hours-worked per week and to use the hours banked as compensatory time off from work; the names of employees who were allowed to use a company credit card to fill gas in their personal vehicles; and various additional related items in connection with the aforementioned information.

The Respondent, by letter dated May 4, 2012, replied to both of the aforementioned letters of the Union, again essentially reiterating what is contained in the Respondent's prior letters, and stating, inter alia,

> Finally, your request for information dated April 24, 2012 is not appropriate. You fail to cite any authority requiring Endo to provide the information you request. Your request, coupled with your failure to provide any written complaints from workers, further suggests that you do not have any facts or basis for commencing the instant grievance as the requested information would be unnecessary and/or already known by you, if you had valid written and signed complaints from actual workers. As mentioned in our previous letter, commencement of a grievance without any written and signed complaints from workers, and attempting to create a case after-the-fact, is improper and Endo will pursue appropriate remedies.

Shimabukuro replied by letter dated May 22, 2012, enclosing complaints from the four employees who had submitted them to the Union prior to the initial filing of the class action grievance. He also states that;

> …class grievances are well recognized in labor relations. There is nothing in the collective bargaining agreement which prohibits class grievances filed by the union as the exclusive bargaining representative under the union recognition clause and the grievance procedure section.

He also reiterates the Union's request that the Respondent provide the requested information.

The Respondent replied by letter dated July 20, 2012, advising that it would be willing to supply only some of the requested information pertaining only to the written complaints of the four employees, attached to the Union's aforementioned May 22, 2012 letter, and that much of this information would be further limited to only a 7-day time period in accordance with the Respondent's understanding of the specific wording of Step # 1 of the grievance procedure contained in the contract.

As set forth above, Shimabukuro's initial information request is dated April 24, 2012. During the hearing Shimabukuro testified he needed the requested information to ascertain the extent of the alleged violations in order to make the employees and the trust funds whole, and explained in detail how the requested information, given the nature of the Respondent's business and the various forms the Respondent utilized for record keeping, would enable the Union to determine whether such alleged contract violations had occurred and were continuing to occur. The Respondent did not challenge the relevancy of the requested information; that is, there was no showing by the Respondent, either through cross examination of Shimabukuro or evidence proffered by the Respondent, that the requested information, if it existed, would not be useful to the Union in order to assist it in determining the nature and extent of the alleged contract violations.

In addition to the 2011 class action grievance discussed above, the Shimabukuro has filed other class action grievances under the contract against the Respondent and other signatory contractors for various contract violations. These grievances, however, either resulted in awards applicable only to a specific individual or individuals, rather than a class of individuals, or, in one instance, involved an award applicable to a group of similarly situated employees who were required to report to work earlier than normal without pay in order to facilitate the employer's daily job assignments. Although nominally entitled class action grievances, these grievances are not particularly instructive relative to the issues under consideration in the instant matter.

### C. Analysis and Conclusions

A union's right to file grievances, and an employer's duty to furnish relevant information to the union in furtherance of this right, is part of the collective-bargaining process encompassed by Section 8(a)(5) of the Act. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967). *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). The standard for determining whether the information is relevant to a grievance is a "liberal, discovery-type standard." *Acme Industrial*, supra at 437. Absent a union's clear and unmistakable waiver of such a statutory right, an employer violates Section 8(a)(5) of the Act if it refuses to provide the requested information. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

The complaint alleges that the Respondent's failure to furnish the requested information, and its delay in responding to the Union's information request, is violative of Section 8(a)(1) and (5) of the Act.

The General Counsel and Union maintain that since there is no language in the agreement that specifically precludes a class action type of grievance, nor any contract language that specifically precludes the Union from requesting grievance-related information from the Respondent, there has been no clear and unmistakable waiver of the Union's right to this information. Moreover, the fact that the Joint Industrial Committee in 2011 recognized class grievances and awarded a class-action type remedy, further shows that such grievances are not precluded by the contract. Therefore the Respondent's refusal to furnish the information is clearly unlawful.

The Respondent maintains that the contract language itself does indeed establish such a clear and unmistakable waiver. The Respondent argues that the grievance procedure is employee-specific, and that the clear intent of the exclusive grievance procedure is to provide for the prompt resolution of specific employees' immediate (within 7 working days) grievances.

Accordingly, class action grievances requesting remedial action over extended periods of time on behalf of the entire bargaining unit are clearly precluded by such express contract language. Further, as the Union has thus clearly and unmistakably waived its right to bring class action grievances, it follows that the Union is not entitled to information in order to investigate such grievances; accordingly, the Respondent is clearly not required to furnish the information—encompassing voluminous and dated documents from 2010 to the present—which the Union has requested. Finally, the Respondent maintains that as it was not at the time represented by counsel, its participation in the 2011 Joint Industry Committee class action grievance hearing and its failure to challenge the jurisdiction of the committee may not be relied upon as evidence that the committee did not exceed its authority under the contract.

The Respondent's foregoing interpretation of the grievance language, while not implausible, is problematic in that it severely limits the Union in the exercise of statutory rights, and it is unlikely that any union would be amenable to such restrictions. Neither the General Counsel nor the Union has proffered an interpretation of the grievance language. However, by filing the class action grievance it seems apparent that Shimabukuro has taken the position that once a complaint, or series of complaints, have been submitted to the Union, and the Union has reason to believe that the alleged contract violations are not unique to specific individuals but are common to all bargaining unit employees, the Union may, at its discretion, bring the grievance as a class action on behalf of all adversely affected employees. This, it seems, is an eminently reasonable interpretation of the contract language in that it is expansive and consistent with the Union's statutory rights and obligations.

Accordingly, while the grievance language lends itself to varying interpretations, I find, in agreement with the position of the General Counsel and Union, that nothing in the contract constitutes a clear and unmistakable waiver of the Union's right to bring class action grievances. The General Counsel and Union, relying on *Metropolitan Edison Co.,* supra, maintain that this is the end of the matter and the Respondent's refusal to furnish the requested information is therefore unlawful. The Respondent maintains that in the event the contract language is not deemed to be self-explanatory and is subject to interpretation, the matter must be submitted to interim arbitration before the Board can determine the merits of the instant complaint.

The contract specifically provides that the Joint Industry Committee is the final arbiter of the grievance or dispute except in instances of impasse. Absent impasse, there is no recourse to arbitration. The contract scheme for the resolution of disputes provides that the Joint Industry Committee may determine questions relating to the application of, interpretation of and alleged violations of the agreement. Its determinations are final and binding on all parties to the agreement. The class action nature of the 2011 grievance was or should have been clearly apparent to the Respondent's president, Greg Endo, who attended the hearing.[5] There was no objection from him that the committee was unauthorized to entertain such grievances.[6] The Respondent appears to take the position that because Greg Endo did not raise the issues at the April 28, 2011 hearing, the committee considered the Respondent to be either implicitly conceding the Union's right to file class action grievances or otherwise simply overlooked and failed to consider whether the contract permitted class action grievances or imposed time limitations on grievance remedies. There is no record evidence to support this assumption. The

[5] As noted above, the grievance letter is headed "Class Action Grievance." The letter requests the following relief: "…make employees whole, and afford other appropriate relief to all bargaining unit employees and the union." (Emphasis supplied.)

[6] Greg Endo testified that at the time of the hearing he did not know what a class grievance was, that he was not conversant with the contract, and that, as this was the first Joint Industry Committee hearing he had ever attended, "…we pretty much got runned over because I wasn't prepared for it."

Joint Industry Committee, comprised of "regular members,"[7] is tasked with applying, interpreting and enforcing the contract. It is reasonable to presume, absent any evidence to the contrary, that its members are conversant with and knowledgeable regarding the contract as a whole, including its grievance provisions, and that they endeavor to carry out their duties in accordance with their understanding of the authority and responsibilities conferred on them by the contract.

The committee award, I find, validates the Union's right under the contract to bring class action grievances.[8] Moreover, the committee award, I find, validates remedies commensurate with the violation, as the committee imposed a remedy requiring, inter alia, the production of records back to January 1, 2010, and payment of backpay and trust fund contributions from January 1, 2010 to the present for all adversely affected bargaining unit employees.[9] As noted, the Hawaii Circuit Court enforced this award. Accordingly I find, contrary to the Respondent's position, that interim arbitration of the contractual grievance provisions is neither warranted nor feasible given the 2011 award of the Joint Industry Committee under the contractual scheme established by the Contractors Association and the Union.

*Square D Co., v. NLRB*, 332 F.2d 360 (9th Cir. 1964), upon which the Respondent relies, is distinguishable. In *Square D* the court did not simply rely on the contract language in determining that the matter should be resolved through arbitration; rather it found that as a result of the parties' substantial bargaining history regarding the group incentive plan, and the omission of the plan from the collective-bargaining agreement, the matter of whether the Union had waived its right to file a grievance over and request information regarding the group incentive plan was initially a matter for arbitration. Here there is no record evidence concerning the negotiating history of the grievance procedure and, moreover, the 2011 decision of the Joint Industry Committee is final, binding and decisive. As noted, absent impasse, the contractual scheme provides no recourse to arbitration.

The Respondent's reliance on Society *of Professional Engineering Employees in Aerospace v. Spirit Aerosystems*, 2012 WL 5995552 (D. Kansas, November 30, 2012) is inapposite. In this summary judgment case the district court determined that certain employee-specific contract language contained in the grievance procedure, coupled with other specific affirmative contract language, warranted the finding that the union in effect had waived its right to bring a particular class action matter—employee performance plans—to arbitration. In the instant case there is no additional specific contract language bearing on the Union's right to bring a class action grievance; rather the Respondent relies solely on the aforementioned grievance machinery language in the contract.

The instant 2012 class action grievance, as Shimabukuro notes, is in part a continuation of the 2011 grievance, and in addition includes other alleged contract violations. The Union has requested an abundance of record information from the Respondent, covering many employees[10] and dating back to January 1, 2010, in order to enable the Union to investigate and

[7] See Sec. 19 (A)(1) of the contract: "…there is hereby established a Joint Industry Committee…composed of 3 members representing the Employers and appointed by the Association, and 3 members representing the Union and appointed by the Union. Both sides may select alternates who may vote when regular members are absent."

[8] The fact that the 2011 grievance is not identical with the instant 2012 grievance is therefore not a relevant distinction.

[9] After the Respondent became represented by counsel, apparently in 2012, there was no request for a rehearing regarding either the Union's right under the contract to bring class action grievances, or the extent of the remedy permitted by the contract.

[10] While the employee complement is not constant and may vary considerably throughout the contract term, it appears the number of unit employees may vary from about 50 to 80 during any given period.

present the grievance to the Joint Industry Committee. I find that the contract language, coupled with the 2011 decision of the Joint Industry Committee, is dispositive of both matters. Thus, the Respondent has failed to show by clear and unmistakable evidence that the Union waived its right to file class action grievances, and has also failed to show by clear and unmistakable evidence that the Union waived its right to pursue grievance remedies encompassing more than a 7-day time period. *Metropolitan Edison Co. v. NLRB*, supra.

Accordingly I find that the Union is entitled to obtain information from the Respondent in furtherance of its grievance in accordance with well-established guidelines.

As noted above, the Union has requested an abundance of information. The Respondent, in its brief, maintains that the Union's request for information constitutes harassment and is overbroad, unduly burdensome and in bad faith, and that some of the requested information is confidential and proprietary. During the hearing Shimabukuro explained in detail his understanding of the records routinely maintained by the Respondent, and the Union's reasons for believing that the requested records would enable the Union to investigate the grievance and assist the Union in presenting its case to the Joint Industry Committee.[11] The Respondent had an opportunity during the hearing to show that the Union was either not entitled to the information or that the information would not be probative of any issues relative to the Union's investigation and processing of the grievance.[12] It did not do so. Nor did it show the alleged confidential and proprietary nature of any information.

The Respondent further maintains that its recordkeeping is rather haphazard and disorganized, that it or its supervisors may not have retained and/or may be unable to locate some of the records, and that its efforts spent in attempting to gather and produce the records would therefore necessarily be expensive and time-consuming. While this may be the case, I find the argument that the Respondent's lax recordkeeping practices would place a significant burden on it to search for and produce the records is not a valid reason for its failing and refusing to make a good faith effort to do so.[13]

On the basis of the foregoing, I find that the Respondent has violated Section 8(a)(1) and (5) of the Act as alleged by delaying and failing and refusing to furnish information necessary for the Union to investigate and present its grievance to the Joint Industry Committee.

[11] I credit the testimony of Shimabukuro, who testified at length and appeared to be a forthright witness with a good understanding of the Respondent's operations relative to the unit employees. The Respondent has merely asserted but has not demonstrated by any record evidence that Shimabukuro's filling of the grievance or request for information was designed to harass the Respondent or was otherwise not in good faith. The grievance was based on the complaints of employees and others. The alleged contract violations are serious in nature, and their extent cannot be determined without substantiating records. Moreover, Shimabukuro's request for information dating back to January 2010, is not arbitrary and without foundation, but rather is coextensive with the related 2011 award of the Joint Industry Committee.

[12] As noted, the standard for determining whether the information is relevant to a grievance is a "liberal, discovery-type standard." *Acme Industrial*, supra*; Island Creek Coal Company,* 292 NLRB 480, 487 (1989).

[13] In the event the parties are unable to resolve differences regarding the production of records, such matters may be relegated to the compliance stage of this proceeding.

## Conclusions of Law and Recommendations

1. The Respondent Endo Painting Service, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated and is violating Section 8(a)(5) and (1) of the Act as alleged in the complaint and found herein.

## The Remedy

Having found that the Respondent has violated and is violating Section 8(a)(5) and (1) of the Act, I recommend that it be required to furnish the Union with the information the Union has requested as specifically set out in paragraph 7 of the complaint and notice of hearing in this matter, which information request is hereby incorporated by reference in this decision.

I shall also recommend that the Respondent be required to cease and desist from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Finally, I shall recommend the posting of an appropriate notice, attached hereto as "Appendix."

## ORDER[14]

The Respondent Endo Painting Service, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

   (a) Delaying and failing and refusing to furnish the Union with the information it has requested in order to investigate the grievance it has filed and to determine the extent of any alleged contract violations.

   (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the purposes of the Act:

   (a) Furnish the Union with the information it has requested as specifically set out in paragraph 7 of the complaint and notice of hearing in this matter, which information request has been incorporated by reference in this decision.

   (b) Within 14 days after service by the Region, post at its various Hawaii locations copies of the attached notice marked "Appendix."[15] Copies of the

[14] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and shall remain posted by the Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Regional Office, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C. February 22, 2013

Gerald A. Wacknov
Administrative Law Judge

[15] If this Order is enforced by a judgment of the United States Court of Appeals, the wording in the notice reading, "Posted by Order of the National Labor Relations Board," shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

## NOTICE TO EMPLOYEES
## POSTED BY ORDER OF THE
## NATIONAL LABOR RELATIONS BOARD
## AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

The International Union of Painters and Allied Trades, Painters Local Union 1791 is the collective-bargaining representative of our employees in the following described collective-bargaining unit:

> All employees…classified and performing work as foreperson, sub-foreperson, journeyperson, and apprentices including but not limited to workers performing work as painters, paper hangers, applicators or wall fabrics, abrasive blaster, mold and fungi abatement/removal, texture coatings, floor coating, roof coatings, wateproofing, asbestos removal, lead abatement, thermo stripers, caulking and puttying specializers, spray painters, spray foam applicators, masonry and concrete spall/patch repairers, drywall tapers, and taper trainees in the State of Hawaii, or who are assigned to projects outside the State of Hawaii, but does not cover office clerical employees, watchperson, or supervisors (except foreperson) as defined in the National Labor Relations Act, as amended.

WE WILL NOT delay or fail and refuse to furnish the Union with the information it has requested in order to investigate the class action grievance it has filed regarding alleged contract violations from January 1, 2010 to the present.

WE WILL furnish the Union with the requested information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

ENDO PAINTING SERVICE, INC.

_____

(Employer)

Dated: _____ By: _____

(Representative) (Title)

**This is an official notice and must not be defaced by anyone.**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be referred to the Board's office, 300 Ala Moana Boulevard, Room 7-245, Honolulu, HI 96850-4980, Phone 808-541-2814.